

NO. 28115

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

MBNA AMERICA BANK, N.A., Plaintiff-Appellee
v.
DARREN K. KAMALU, a.k.a. DARREN KAMALU,
Defendant-Appellant

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 NOV 21 AM 9:29

FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CV. NO. 03-1-0454)

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Defendant/Counterclaim-Plaintiff/Appellant Darren K. Kamalu's (Appellant Kamalu) appeal.

Appellant Kamalu did not file his August 21, 2006 notice of appeal within thirty days after entry of any of the appealed judgments and orders, except for the July 28, 2006 "Order for Issuance of Garnishee Summons After Judgment," as Rule 4(a)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) requires. The failure to file a timely notice of appeal in a civil matter is a jurisdictional defect that the parties cannot waive and the appellate courts cannot disregard in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986); HRAP Rule 26(b) ("[N]o court or judge or justice thereof is authorized to change the jurisdictional requirements contained in Rule 4 of [the HRAP].").

Although Appellant Kamalu filed his August 21, 2006 notice of appeal within thirty days after entry of the July 28,

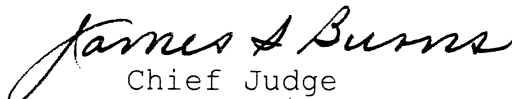
NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

2006 "Order for Issuance of Garnishee Summons After Judgment," the July 28, 2006 order is not an appealable final post-judgment order under HRS § 641-1(a) (Supp. 2005) or HRS § 658A-28 (Supp. 2005), because the July 28, 2006 order is merely an interlocutory order in the post-judgment garnishment proceedings that has not finally adjudicated the rights of any party. Rather than having ended the post-judgment garnishment proceedings, the July 28, 2006 order has perpetuated the post-judgment garnishment proceedings by enabling them to continue forward. See Familian Northwest, Inc. v. Central Pacific Boiler & Piping, Ltd., 68 Haw. 368, 370, 714 P.2d 936, 937 (1986); Ditto v. McCurdy, 103 Hawai'i 153, 157, 80 P.3d 974, 978 (2003) ("A post-judgment order is an appealable final order under HRS § 641-1(a) if the order ends the proceedings, leaving nothing further to be accomplished." (Citation omitted).)

Absent a timely appeal from an appealable final judgment or order, we lack appellate jurisdiction. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, November 21, 2006.


Chief Judge


Associate Judge


Associate Judge